

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE COUNTY OF SAN DIEGO HEALTH AND HUMAN SERVICES AGENCY
BEHAVIORAL HEALTH DIVISION AND
THE SAN DIEGO COUNTY SUPERINTENDENT OF SCHOOLS
FOR CHILDREN'S MENTAL HEALTH SERVICES**

This memorandum of understanding ("MOU") is made and entered into between County of San Diego Health and Human Services Agency Behavioral Health Division ("CMH") and the San Diego County Superintendent of Schools ("SDCOE"), together with CMH ("Parties").

WHEREAS, Government Code sections 7570 *et seq.* (also known as "AB 3632") shifts the state's obligation to counties and their county mental health agencies to provide an array of educationally-related mental health services, required by students with disabilities as determined by an individualized education program ("IEP");

WHEREAS, the State Legislature, in the Budget Act, provides federal Individuals with Disabilities Education Act ("IDEA") local assistance funding for the provision of educationally-related mental health services that are provided to students with disabilities as determined by an IEP pursuant to AB 3632 by transmitting the funds to county offices of education;

WHEREAS, in previous fiscal years the Budget Act required each county office of education and county mental health agency to enter into a Memorandum of Understanding for the purpose of transferring these federal IDEA funds, subject to the fulfillment of the grant's terms and conditions, to the county mental health agency for educationally-related mental health services as set forth in AB 3632 that are provided to students with disabilities as determined by an IEP;

WHEREAS, in previous fiscal years the state has also provided General Fund support directly to the counties to provide an array of educationally-related mental health services to students with disabilities pursuant to an IEP;

WHEREAS, on October 8, 2010, the Governor of the State of California vetoed all state funding for educationally-related mental health services provided pursuant to AB 3632 and unilaterally declared the mandate on county mental health agencies to provide these services suspended;

WHEREAS, the Governor's authority to suspend the mandate on county mental health agencies to provide AB 3632 services is currently in dispute;

WHEREAS, the Legislature failed to appropriate state funds in the approximate amount of \$70 million required by Welfare and Institutions Code section 18355 necessary to pay counties for the room and board costs for seriously emotionally disturbed students;

WHEREAS, on October 29, 2010, the State Superintendent of Public Instruction ("SPI") announced that the California Department of Education ("CDE") will continue to allocate \$76 million in available federal IDEA funds to maintain essential mental health services for students with disabilities despite the Governor's unilateral suspension of mental health services for

eligible students and his line-item veto of \$133 million in mandate reimbursement for services provided by county mental health agencies;

WHEREAS, the SPI stated that the \$76 million to be disbursed by the CDE will ensure mental health services that are included within a student's IEP, pursuant to the IDEA, are appropriately provided during the 2010-11 fiscal year by county mental health agencies consistent with current statute;

WHEREAS, the federal IDEA funds are insufficient to entirely fund the AB 3632 services for the 2010-2011 fiscal year;

WHEREAS, the General Assurances and Federal Funds Conditions, required by CDE, are part and parcel of this MOU and must be agreed to prior to release of funds to each county office of education and subsequently to the county mental health agency; and

WHEREAS, the Parties have collaborated and enter into this MOU in order to: (1) facilitate the transfer of the federal IDEA funds from SDCOE to CMH which shall be used exclusively for the purpose of funding mental health services identified within an IEP, and for which expenses have been or will be incurred in fiscal year 2010-2011, as described in Sections A and B below; and (2) to ensure the continuity of the provision of AB 3632 educationally-related mental health services to students with disabilities, within the 42 San Diego County school districts ("School Districts"), who receive such services as part of their IEPs unless and until further direction is provided by a court of competent jurisdiction, the Legislature or the Governor regarding the responsibility for the provision and funding for educationally-related mental health services, as described in Sections C and D below.

NOW, THEREFORE, it is agreed as follows:

Section A – Provision of AB 3632 Services

1. Subject to Section D below, CMH agrees to provide AB 3632 educationally-related mental health services from July 1, 2010 through and including June 30, 2011. AB 3632 educationally-related mental health services for eligible students may include, but are not limited to, attending IEP meetings, assessments, individual therapy, group therapy, collateral services, case management, medication management, intensive day treatment, day rehabilitation, residential placement, and any other mental health services ("AB 3632 Services"). However, CMH's obligation to fund room and board for residentially placed eligible students ends on February 28, 2011, thus on March 1, 2011, the School Districts shall assume responsibility for room and board services for the students within their boundaries.
2. CMH agrees to seek out and apply for other sources of county, state, or federal funding, including but not limited to, funding from Medi-Cal or the Department of Social Services, at least to the same extent as in prior years and consistent with applicable laws. Such funding and/or reimbursements received by CMH for AB 3632 Services shall offset any amount SDCOE is required to fund under this MOU ("Offset"). The accounting of

expenditures to SDCOE and the School Districts as described in paragraph 10 below, shall reflect the costs of services, the amount and payment source of any Offsets and the net cost for the reimbursement.

Section B – Transfer of IDEA Funds for AB 3632 Services Until IDEA Funds Are Exhausted

3. SDCOE shall transfer federal IDEA funds to CMH within five (5) business days of the SDCOE's receipt of the IDEA funds from CDE for the provision of AB 3632 Services. This amount totals approximately \$4.4 million dollars for the 2010 – 2011 fiscal year.
 - a. The transfer of such IDEA funds shall only be used for educationally-related mental health AB 3632 services for eligible students, rendered from July 1, 2010 to June 30, 2011 or until the funding allocated and distributed by CDE is exhausted, whichever of these events occurs first.
 - b. CMH will provide a report to SDCOE and the School Districts as to when it projects the federal IDEA funds allocated and distributed from CDE to SDCOE for mental health services for eligible students will be exhausted. The Parties anticipate that CMH will distribute this report on or about February 4, 2011.

Section C – Reimbursement for AB 3632 Services Once IDEA Funds are Exhausted

4. SDCOE will reimburse CMH for the provision of AB 3632 Services (but only as described in "Attachment A," which excludes room and board) rendered from October 8, 2010 to June 30, 2011, that exceed the amount of federal IDEA funds allocated and distributed from CDE to SDCOE for AB 3632 Services, less the Offset. This amount shall be referred to as the "Additional Costs."
 - a. SDCOE will reimburse CMH for the Additional Costs within 30 days of receipt of the accounting of expenditures (to be sent by CMH to SDCOE on January 14, 2011 and August 12, 2011, as more specifically set forth in paragraph 10 below), subject to verification by SDCOE and the School Districts.
 - b. The Additional Costs shall only be for AB 3632 Services described in "Attachment A," which is an exhaustive list.
 - c. The Additional Costs shall not exceed \$8 million. However, in the event the projected Medi-cal units are not realized for students already verified pursuant to paragraphs 4 and 10 by SDCOE and the School Districts, CMH will notify SDCOE and the School Districts in writing via an invoice and report as early as December 31, 2012, but by no later than June 30, 2014.
 - i. Subject to verification by SDCOE and the School Districts, SDCOE shall reimburse CMH for the Additional Costs that exceed \$8 million within 30 days of SDCOE's receipt of the invoice and report described above provided that said documentation is received by close of business on 5:00 p.m. on June 30, 2014. In the event the documentation is received after

5:00 p.m. on June 30, 2014, SDCOE and/or the School Districts will have no obligation to reimburse CMH for any Additional Costs in excess of \$8 million.

- ii. The Parties agree and understand that SDCOE and the School Districts shall not be responsible for any additional costs that exceed \$8 million for a student not previously verified by SDCOE and the School Districts pursuant to paragraphs 4 and 10.

Section D – Reimbursement for Room and Board from October 8, 2010 to February 28, 2011

5. CMH agrees to fund the room and board costs for eligible students with disabilities from October 8, 2010 through and including February 28, 2011 (“R&B Costs”). R&B Costs are limited to the costs of food, shelter, daily supervision, and liability insurance with respect to a student. The projected R&B Cost is \$5,100,000.00. CMH will issue an invoice and report for the R&B costs to SDCOE and the School Districts by no later than May 31, 2011.
6. SDCOE agrees to reimburse CMH for those expenditures referenced in Section D 5. above within 30 days of receipt of the invoice and report, subject to verification by SDCOE and the School Districts.
7. Beginning on March 1, 2011, the School Districts will be responsible for contracting with residential treatment facilities for R&B Costs.

Section E – Miscellaneous

8. Should a court of competent jurisdiction, the Legislature or the Governor determine that the State Department of Mental Health and its local county mental health agencies are responsible for providing AB 3632 Services, funding and provision of services shall remain in effect and be in accordance with the terms and conditions of Sections A, B and E of this MOU. In such an event, however, Sections C and D of this MOU shall be null and void and CMH will immediately stop invoicing SDCOE and the School Districts for the Additional Costs and R&B Costs, and CMH shall reimburse SDCOE for such costs within 60 days of this event. The Parties understand and agree that the Parties are not waiving their respective rights to file claims and/or seek other appropriate relief as a result of the Governor’s unilateral suspension of mental health services for eligible students and his line-item veto in mandate reimbursement for services provided by county mental health agencies.
9. Condition precedent. Sections C and D of this MOU shall not be effective unless and until all of the Parties execute this MOU and their respective Governing Boards approve or ratify this MOU and the Governing Boards of all of the School Districts approve or ratify the “Reimbursement MOU” wherein the School Districts agree to reimburse SDCOE for the Additional Costs and R&B Costs as described in Sections C and D above.

10. Records. CMH will provide SDCOE and School Districts with an accounting of expenditures incurred pursuant to this MOU two times for the fiscal year. The first accounting of expenditures will cover the period of July 1, 2010 through October 31, 2010, and will be provided on or before January 14, 2011. The second accounting of expenditures will cover the period of November 1, 2010 through June 30, 2011, and will be provided on or before August 12, 2011.

The accounting records will include for each student the following data: the school district of residence, as provided most recently in writing by a School District; the Service Function Code ("SFC") only of the services provided pursuant to Government Code section 7570 *et seq.*; the units of service; and the cost per unit. The student's name, date of birth, provider name, date of service, unit/minutes/mode, estimated cost per unit, and SFC in sufficient detail to enable SDCOE to establish a link between the services claimed and the individual student's IEP. CMH shall also provide SDCOE and School Districts with invoices, that reconcile with the figures on the accounting records, at the same time the accounting of expenditures is provided to SDCOE as described above. CMH is responsible for maintaining all required documentation in accordance with current practice for audit purposes.

11. Audit. SDCOE auditors will have access to CMH records supportive of claims filed pursuant to this MOU if required for audit purposes as allowed by state and federal law. CMH will be responsible for any audit exceptions and/or disallowed claims filed pursuant to this MOU for fiscal year 2010-2011 which are the responsibility of the CMH. SDCOE will be responsible for any audit exceptions and/or disallowed claims filed pursuant to this MOU for fiscal year 2010-2011 which are the responsibility of SDCOE. In the event of the need for an audit appeal, CMH and SDCOE will mutually agree upon the most expedient process for resolution. This audit provision shall survive the term of this MOU.
12. Referrals and Assessment Reports. CMH and SDCOE agree to abide by the policies and procedures for making student referrals and providing the necessary assessment reports as set forth in Government Code section 7576 and clarified in California Code of Regulations, Title 2, Division 9, section 60040.
13. Privacy. CMH and SDCOE acknowledge the protections afforded to student health information under regulations adopted pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. No. 14-109, students' records under the Family Educational Rights and Privacy Act, section 1232g of Title 20 of the United States Code; and under provisions of state law relating to privacy. CMH and SDCOE shall ensure that all activities undertaken under this MOU will conform to the requirements of these laws.
14. Indemnity. CMH and SDCOE shall each defend, hold harmless and indemnify the other party, its governing board, officers, administrators, agents, employees, independent contractors, subcontractors, consultants, and other representatives from and against any and all liabilities, claims, demands, costs, losses, damages, or expenses, including

reasonable attorneys' fees and costs, and including but not limited to consequential damages, loss of use, extra expense, cost of facilities, death, sickness, or injury to any person(s) or damage to any property, from any cause whatsoever arising from or connected with its service hereunder, that arise out of or result from, in whole or in part, the negligent, wrongful or willful acts or omissions of the indemnifying party, its employees, agents, subcontractors, independent contractors, consultants, or other representatives.

This indemnity provision shall survive the term of this MOU and is in addition to any other rights or remedies that CMH or SDCOE may have under law and/or the MOU.

15. **Integration.** This MOU represents the entire understanding of SDCOE and CMH as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered hereunder. This MOU may not be modified or altered except in writing signed by both parties hereto. This is an integrated MOU.
16. **Laws and Venue.** This MOU shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this MOU, the action shall be brought in a state or federal court situated in the County of San Diego, State of California, unless otherwise specifically provided for under California law.
17. **Third Party Rights.** Nothing in this MOU shall be construed to give any rights or benefits to anyone other than SDCOE, CMH and School Districts.
18. **Severability.** The unenforceability, invalidity or illegality of any provision(s) of this MOU shall not render the other provisions unenforceable, invalid, or illegal.
19. **Term.** Except as otherwise provided for herein, this MOU shall cover the period of July 1, 2010 through and including June 30, 2011. This MOU shall terminate as of the close of business on June 30, 2011, except as provided for paragraph 8 above. However, this MOU may be extended by the parties' mutual written consent if an extension is required to transfer additional federal IDEA funds made available by the State for the same purpose.
20. **General Assurances.** As a condition of receiving funds under Section B of this MOU, CMH has reviewed and executed the attached General Assurances and Federal Funds Conditions last reviewed on August 20, 2010, as required by CDE as stated in the grant letter of intent. SDCOE shall provide CMH with a copy of any amendments to the General Assurances and Federal Funds Conditions for CMH's review, which attached hereto as "Attachment B". Within ten (10) days of receiving any amendments to the General Assurances and Federal Funds Conditions, CMH shall execute the General Assurances and Federal Funds Conditions and return a signed copy. Receipt of an executed copy of the General Assurances and Federal Funds Conditions and any amendments thereto is a condition precedent to release of funds under this MOU to the CMH.

21. Dispute Resolution. CMH and SDCOE agree that the following process will be used to address disputes on the implementation of the MOU only after collaborative efforts have been attempted at the lowest possible level.

By July 1 of 2010, and for any extension of this MOU beyond June 30, 2011, CMH and SDCOE will name a mutually agreed upon administrator of a county department or agency to assist to resolve disputes using a process of facilitated communication through non-binding CMH and SDCOE mediation. The parties will use the following process:

- A written notice of the request for dispute resolution, including a description of the concerns to be addressed, shall be forwarded by the agency initiating the dispute to the non-initiating party.
- If the issue is not resolved within five (5) business days, the agency initiating the dispute shall request that the outside party be contacted to schedule a meeting between the agencies.
- No later than sixty (60) calendar days from the date mediator is contacted, a resolution plan between the two agencies will be developed.
- The responsible CMH and SDCOE personnel services shall be responsible for assuring the agreements included in the resolution plan are implemented.
- The costs for this service shall be shared equally between CMH and SDCOE.

22. The signatories of this MOU or their designee shall be responsible for assuring the agreements included in the resolution plan are implemented.

Neither party shall be deemed to be in default of the terms of this MOU if either party is prevented from performing the terms of this MOU by causes beyond its control, including without being limited to: acts of God; any laws and/or regulations of state or federal government; or any catastrophe resulting from flood, fire, explosion, or other causes beyond the control of the defaulting party. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other parties written notice of the cause for delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, if correctable, and if the condition that caused the delay is corrected, the party delayed shall immediately give the other parties written notice thereof and shall resume performance of the terms of this MOU.

Neither party shall be liable for any excess costs if the failure to perform the MOU arises from any of the contingencies listed above.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized officers in the County of San Diego, California.

This MOU is entered into this ____ day of _____ 2011, by and between the undersigned parties.

**COUNTY OF SAN DIEGO HEALTH AND HUMAN SERVICES AGENCY
BEHAVIORAL HEALTH DIVISION**




Nick Macchione, Director, Health and Human Services Agency

2/2/11

Date

SAN DIEGO COUNTY OFFICE OF EDUCATION



Lora L. Duzyk, Assistant Superintendent for Business Services on behalf of
Randolph E. Ward, County Superintendent, San Diego County Office of Education

1-28-11

Date

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APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL.

BY 

SENIOR DEPUTY

Attachment A - Mental Health Treatment Codes

| <u>Anasazi ID</u> | <u>Anasazi Description</u> | <u>Mode</u> | <u>Service Function</u> |
|-------------------|----------------------------------|-------------|-------------------------|
| 50 | Case Management / Brokerage | 15 | 01 |
| 33 | Collateral | 15 | 10 |
| 9 | Assessment Psychosoc Interactive | 15 | 30 |
| 10 | Assessment - Psychosocial | 15 | 30 |
| 12 | Psychological Testing | 15 | 30 |
| 13 | Plan Development | 15 | 30 |
| 14 | Eval of Records for Assessment | 15 | 30 |
| 16 | Psychological Testing-Technician | 15 | 30 |
| 15 | External Report Preparation | 15 | 40 |
| 30 | Psychotherapy-Individual | 15 | 40 |
| 34 | Rehab - Individual | 15 | 40 |
| 37 | Rehab Evaluation | 15 | 40 |
| 38 | Psychotherapy Interactive-Ind | 15 | 40 |
| 31 | Psychotherapy - Group | 15 | 50 |
| 32 | Psychotherapy - Family | 15 | 50 |
| 35 | Rehab - Group | 15 | 50 |
| 36 | Rehab - Family | 15 | 50 |
| 39 | Psychotherapy Interactive-Grp | 15 | 50 |
| 40 | Collateral Group | 15 | 50 |
| 46 | Therapeutic Beh Svcs-Plan Dev | 15 | 58 |
| 47 | Therapeutic Beh Svcs - Direct | 15 | 58 |
| 48 | Therapeutic Beh Svcs - Assess | 15 | 58 |
| 49 | Therapeutic Beh Svcs - Col | 15 | 58 |
| 11 | Medication Evaluation | 15 | 60 |
| 20 | Medication Support Other | 15 | 60 |
| 21 | Medication Education Group | 15 | 60 |
| 22 | Meds - Pharmacological Mgmt | 15 | 60 |
| 23 | Med Check MD Brief | 15 | 60 |
| 70 | Crisis Intervention | 15 | 75 |
| | Day Treatment | | |
| 95 | Day Intensive Half | 10 | 84 |
| 95 | Day Intensive Full | 10 | 85 |
| 95 | Day Rehab Half | 10 | 91 |
| 95 | Day Rehab Full | 10 | 96 |

ATTACHMENT B

California Department of Education (<http://www.cde.ca.gov/fg/fo/fm/genassur.asp>)
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General Assurances

California Department of Education General Assurances required for grants supported by state and federal funds.

Note: By signing the grant application and including a copy of this document with it, the authorized official agrees to the assurances presented here. No signature should be placed on this page.

Discrimination

As the duly authorized representative of the applicant, I certify that the applicant will comply with all federal statutes relating to nondiscrimination, including (a) Title VI of the Civil Rights Act of 1964 (45 *United States Code [USC]* sections 2000d through 2000d-4) prohibiting discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972 (20 *USC* sections 1681-1683) prohibiting discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973 (29 *USC* Section 794) prohibiting discrimination on the basis of handicap; and The Age Discrimination Act (42 *USC* Section 6101, *et seq.*) prohibiting discrimination on the basis of age.

Costs

As the duly authorized representative of the applicant, I certify that the applicant will comply with the general cost principles set forth in federal regulations, 34 *Code of Federal Regulations (CFR)* Section 74.27 and 34 *CFR* Section 80.22, and the Office of Management and Budget circulars applicable to my entity.

I further certify that the applicant will comply with the expenditure requirements set forth in the federal Education Department General Administrative Regulations (EDGAR) contained in Title 34 of the *CFR*.

Records

As the duly authorized representative of the applicant, I certify that the applicant will make reports to the state or federal agency designated in the application as may reasonably be necessary to enable those agencies to perform their duties. The applicant will maintain and provide access to all records used in the preparation of such reports for a period of five years. Such records shall include, but not be limited to, records which fully disclose the amount and disposition by the recipient of funds, the total cost of the activity for which the funds are used, the share of the cost provided from other sources, and such other records as will facilitate an effective audit. The recipient shall maintain such records for five years after the completion of the activities for which the funds are used.

Applicable Law

As the duly authorized representative of the applicant, I certify that the applicant will comply with all state and federal statutes, regulations, program plans, and eligibility requirements applicable to each program under which federal and state funds are made available through the application.

CDE-100A (Revised Aug-2005) - California Department of Education

Questions: **Funding Master Plan** | fmp@cde.ca.gov | 916-323-1544

Last Reviewed: Friday, August 20, 2010